

Remarks/Arguments

Claims 1-20 are pending. The Examiner has required restriction of these claims under 35 U.S.C. § 121, and has grouped these claims into Groups I-III. (Office Action at 2.) Applicants have treated “II. Claims 5-40” (Office Action at 2) as meaning Group II claims 5-10.

Applicants elect, with traverse, Group I, claims 1-4 and 11-14. Claims 5-10 and 15-20 are hereby withdrawn, subject to Applicants’ request that the Examiner rescind the restriction requirement. Applicants reserve the right to file a divisional application that includes these claims at a later date. Although Applicants are making the above election to be fully responsive to the restriction requirement, Applicants respectfully traverse the requirement and reserve the right to petition under 37 C.F.R. §1.144. Applicants request reconsideration and withdrawal of the restriction requirement with respect to Groups I-III.

The Office Action states that “the inventions are independent or distinct for the reasons given above and there would be a serious burden on the examiner if restriction is not required because the inventions require a different field of search (see MPEP § 808.02), restriction for examination purposes as indicated is proper.” (Office Action at 4.) This is not a proper restriction for at least the following reasons.

First, the correct standard for restriction is whether the species are “independent and distinct,” and not whether they are “independent or distinct.” 35 USC § 121 states that “[i]f two or more *independent and distinct* inventions are claimed in one application, the Director may require the application to be restricted to one of the inventions.” 37 CFR 1.142(a) also states the “seperate and distinct” standard: “[i]f two or more *independent and distinct* inventions are claimed in a single application, the examiner in an Office action will require the applicant in the reply to that action to elect an invention to which the claims will be restricted, this official action being called a requirement for restriction (also known as a requirement for division).” There is no statutory or regulatory authority for the Examiner to restrict where the species may be “separate or distinct.”

Second, the MPEP requires that the Examiner show that “[t]here would be a serious burden on the examiner if restriction is not required.” MPEP § 803; *see* MPEP § 802.02. The Office action is devoid of any such showing of serious burden. Without this showing, the restriction requirement is improper. In fact, examining Groups I-III together would not constitute a serious burden because the claimed inventions have the same classification, the same field of search, and the Examiner has shown no clear indication of separate status in the art. All of the claims recite a bag system with identification tags. Thus, the search and examination of Group I should substantially, if not completely, overlap the necessary search and examination for Groups II-III. Moreover, the Examiner has determined that each of the three groups of claims are classified in the identical class. Furthermore, the MPEP requires that “If the search and examination of all the claims in an application can be made without serious burden, the examiner must examine them on the merits, even though they include claims to independent or distinct inventions.” MPEP § 803. For at least these reasons, Applicants request that the restriction requirement be withdrawn.

For at least these reasons, Applicants respectfully request the restriction requirement as to claims 1-20, grouped into Groups I-III, be withdrawn. Applicants further request examination of claims 1-20.

SUMMARY

In light of the above remarks, Applicants respectfully request reconsideration and withdrawal of the outstanding rejections. Applicants further submit that the application is now in condition for allowance, and earnestly solicit timely notice of the same. Should the Examiner have any questions, comments, or suggestions in furtherance of the prosecution of this application, the Examiner is invited to contact the attorney of record.

Applicants believe that there are no fees due in association with this filing of this Response. However, should the Commissioner deem that any additional fees are due, including any fees for extensions of time, the Commissioner is authorized to debit Baker Botts L.L.P. Deposit Account No. 02-0383, Order Number 069208.0117, for any underpayment of fees that may be due in association with this filing.

Respectfully submitted,

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